

STATE OF INDIANA) IN THE HAMILTON CIRCUIT COURT

) SS:
COUNTY OF HAMILTON)

CAUSE NO. 29c01-0212 PL 1386

STATE OF INDIANA, ^{3 am})

Plaintiff,)

v.)

ADAM T. NEVIUS,)
individually and doing business as)
MIDWEST CONSTRUCTION)
COMPANY OF CENTRAL)
INDIANA, INC., and)

MIDWEST CONSTRUCTION)
COMPANY OF CENTRAL)
INDIANA, INC.,)

Defendants.)

**COMPLAINT FOR INJUNCTION, RESTITUTION,
COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c) and Ind. Code §24-5-11-14.

2. Defendant, Adam T. Nevius ("Nevius"), is an individual who at all relevant times to this complaint was engaged in business as a home improvement contractor, doing business as Midwest Construction Company of Central Indiana, Inc., with a principal place of business at P.O. Box 902, Noblesville, Indiana.

3. Defendant, Midwest Construction Company of Central Indiana, Inc. ("Midwest"), is an Indiana corporation, which at all times relevant to this complaint, maintained a principal place of business at P.O. Box 902, Noblesville, Indiana. Upon information and belief, Defendant Nevius is an officer of Defendant Midwest Construction Company of Central Indiana, Inc.

FACTS

4. As alter ego of Defendant Midwest Construction Company of Central Indiana, Inc., Nevius has been conducting, managing, and controlling the affairs of the Defendant corporation as if it were his own business, and he has used Defendant corporation for the purpose of defrauding consumers as hereinafter set forth.

5. Since at least September 28, 2000, the Defendants individually and collectively have entered into home improvement contracts with Indiana consumers.

A. Allegations Regarding Robert Rentch.

6. On or around April 28, 2002, the Defendants entered into a contract with Robert Rentch ("Rentch") of Noblesville, Indiana, wherein the Defendants agreed to build a pressure treated deck on the back of the home for a price of Three Thousand Dollars (\$3,000.00). A true and accurate copy of the Defendants' contract with Rentch is attached and incorporated by reference as Exhibit "A."

7. On or around June 21, 2002, Rentch paid One Thousand and Five Hundred Dollars (\$1,500.00) to the Defendants as a down payment.

8. Defendants failed to provide Rentch with a written home improvement contract that contained:

- a. a name and address of an agent to whom consumer problems or inquiries related to the home improvement could be directed;
- b. a time limitation on the consumer's acceptance of the home improvement contract;
- c. the approximate completion date of the home improvement;
- d. a statement of any contingencies that would materially change the approximate completion date;
- e. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible or typed version of that person's name placed directly after or below the signature;

9. At contract signing, the Defendants represented to Rentch that the work would be completed within a reasonable period of time.

10. The Defendants have not started and, therefore, have not completed any work under the home improvement contract.

B. Allegations Regarding Richard A. Kelner.

11. On or around June 5, 2002, Defendants entered into a contract with Richard A. Kelner ("Kelner") of Carmel, Indiana, wherein the Defendants agreed to build a pressure treated deck off the back of Kelner's home for a price of Four Thousand Three

Hundred Dollars (\$4,300.00). A true and accurate copy of the Defendants' contract with Kelner is attached and incorporated by reference as Exhibit "B."

12. On or about June 24, 2002, Kelner paid One Thousand Five Hundred and Five Dollars (\$1,505.00) to the Defendants as a down payment.

13. The Defendants failed to provide Kelner with a written home improvement contract that contained:

- a. a name and address of an agent to whom consumer problems or inquiries related to the home improvement could be directed;
- b. a time limitation on the consumer's acceptance of the home improvement contract;
- c. the approximate start and completion date of the home improvement;
- d. a statement of any contingencies that would materially change the approximate completion date;
- e. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible or typed version of that person's name placed directly after or below the signature;

14. At contract signing, the Defendants represented to Kelner that the work would be completed within a reasonable period of time.

15. The Defendants have yet to start and, therefore, have not completed any work under the home improvement contract.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

16. The services described in paragraphs 6 and 11 are "home improvements" as defined by Ind. Code §24-5-11-3.

17. The transactions referred to in paragraphs 6 and 11 are "home improvement contract" as defined by Ind. Code §24-5-11-4.

18. Nevius and Midwest are "suppliers" as defined by Ind. Code §24-5-11-6.

19. By failing to provide Rentch and Kelner with completed home improvement contracts containing the information referred to in paragraphs 8 and 13, the Defendants violated the Home Improvements Contracts Act, Ind. Code §24-5-11-10.

20. The Defendants' violations of the Indiana Home Improvements Contracts Act referred to in paragraphs 8 and 13 constitute deceptive acts and subject the Defendants to the remedies and penalties under Ind. Code §24-5-0.5-1, *et seq.*

COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

21. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 20 above.

22. The transactions referred to in paragraphs 6 and 11 are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(a)(1).

23. The Defendants are "suppliers" as defined by Ind. Code §24-5-0.5-2(a)(3).

24. The violations of the Indiana Home Improvements Contracts Act referred to in paragraphs 8 and 13 above constitute deceptive acts in accordance with Ind. Code §24-5-11-14.

25. By representing that the Defendants could provide home improvement services to Rentch and Kelner within a reasonable amount of time, when they knew or

reasonably should have known that they would not be able to provide the home improvement services within that time period, as referred to in paragraphs 9 and 14 above, the Defendants violated Ind. Code §24-5-0.5-3(a)(10).

COUNT III - KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT

26. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 25 above.

27. The misrepresentations and deceptive acts set forth in paragraphs 8, 9, 13, and 14 above were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Adam T. Nevius and Midwest Construction Company of Central Indiana, Inc., enjoining the Defendants from the following:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:
 - (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
 - (2) The name and address of the home improvement supplier and each of the telephone numbers of any agent to whom consumer problems and inquiries can be directed;
 - (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code § 24-5-11-10(a)(4) does not include the specifications of the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;
- (8) The home improvement contract price; and
- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer; and

d. representing, expressly or by implication, that the Defendants are able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendants know or reasonably should know they cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests that the Court enter judgment against the Defendants for the following relief:

- a. cancellation of the Defendants' contracts with Robert Rentch and Richard Kelner pursuant to Ind. Code §24-5-0.5-5(d);
- b. consumer restitution in an amount to be determined at trial;
- c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:



Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of the Attorney General
Indiana Government Center South
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Indianapolis, IN 46204
Telephone: (317) 233-3300

ENM 71959

Midwest Construction

P.O. Box 902
Noblesville, IN 46061

774-8864 Proposal

| Date | Estimate # |
|-----------|------------|
| 4/28/2002 | 4108 |

Name / Address

Robert Wrench
15095 Fawnhallow Ln.
Noblesville, IN 46060

Terms

Description

I agree to build a pressure treated deck on back of home. There will be two sections. One will be 10x10 and the other will be 14x14. The 14x14 will be one step higher. Posts will be dug in ground 32" and filled with concrete. There will be 2x2 spindle railings around deck with a 2x6 top cap. The deck boards will run on a 45 degree angle. grounds will be kept clean at all times. All work guaranteed for the period of ten years. Midwest is fully insured. Start date will be approx. June 24, 2002.

35% down the day we start. \$1,050.00

PAID \$1,500.00 on 6/21/02

Balance due upon completion \$1,950.00

* [Handwritten signature]

* [Handwritten signature]

I [Handwritten signature]

Thank you for your business.

Total

\$3,000.00

EXHIBIT

A

Signature

Robert L. Rentsch

Midwest Construction

P.O. Box 902
Noblesville, IN 46061

774-8864 Proposal

| Date | Estimate # |
|----------|------------|
| 6/5/2002 | 4113 |

| Name / Address |
|---|
| Richard Kelner 13120 Hazelwood Dr. Carmel, IN. 446-8996 cell # |

Terms

Description

I agree to build a pressure treated deck off of back of home. The deck will match drawing provided with this proposal. All posts will be dug in ground 32" and filled with concrete. We will use the frame of the existing deck. We will cut a 45 degree angle on the corner. The new deck will be three steps lower. This will be a ground level deck. The steps will wrap around the 45 degree angle. We will install a new railing on the north side of the existing deck and a 3' railing along the flower bed. The deck boards will run on a 45 degree angle. We will split the angles up to give it character. There will be built in benches in both outside corners. All edges will be sanded smooth. Grounds will be kept clean at all times. All work guaranteed for the period of ten years. Midwest Construction is fully insured.

35% down = \$1,505.00

Balance due upon completion = \$2,795.00

I recommend treating the deck with Cuprinal sealant. \$350.00 Extra.

Thank you for your business.

Total

\$4,300.00

EXHIBIT

B

Signature